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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,472	12/16/2003	Keith Giacchino	plastic	1471
23217	7590	01/30/2006	EXAMINER	
GLENN L. WEBB P.O BOX 951 CONIFER, CO 80433			MILLS, DANIEL J	
			ART UNIT	PAPER NUMBER
			3679	
DATE MAILED: 01/30/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/707,472		GIACCHINO, KEITH	
	<b>Examiner</b>		<b>Art Unit</b>	
	Daniel J. Mills		3679	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-9 and 29-37 is/are pending in the application.
- 4a) Of the above claim(s) 10-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 29-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 November 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

Claims 10-28 stand withdrawn from further consideration.

#### ***Drawings***

The drawings are objected to because: improper crosshatching is used in figure 2 (a cross sectional view) see MPEP 608.02; It is unclear what numerals 10, 16, 12, 14, 100 are indicating; Indicator lines should be solid (see Figures 5 and 7-9) in reply dated 11/16/2005 applicant states these problems were corrected, but the replacement sheet showing Figures 1 and 2 are has not corrected these problems. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and

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informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Patrick (US 5,657,967).

Regarding claim 1, Patrick discloses a building material component (40), said building material component comprising an extruded component, a textured surface (shown in figure 9) formed on said component, and colored streaks extending through said textured surface capable of simulating wood grain (slight colored streaking throughout is inherent in extruded plastic materials due to material and mixing variations, and in fact is very difficult to eliminate, particularly when virgin material is not used. see column 2 lines 55-58).

Regarding claim 2, Patrick discloses a building material component wherein said extruded component is made from ultraviolet stabilized polyethylene (Column 2 lines 55-65).

Regarding claim 3, Patrick discloses a building material component (40) wherein said textured surface (shown in figure 9) is created from injecting an agent having a

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melt temperature different than that of the base material of the component during the extrusion process. The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "injecting an agent having a melt temperature different than that of the base material of the component during the extrusion process" has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 4, Patrick discloses a building material component (40) wherein said textured surface (shown in figure 9) is created from injecting a blowing agent having a melt temperature different than that of the base material of the component during the thermoforming process. The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "injecting a blowing agent having a melt temperature different than that of the base material of the component during the thermoforming process" has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 5, Patrick discloses a building material component (40 wherein said colored streaks (slight colored streaking throughout is inherent in extruded plastic materials due to material and mixing variations, and in fact is very difficult to eliminate, particularly when virgin material is not used. see column 2 lines 55-58) are created by adding one or more coloring agents having different melt temperatures. The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "adding one or more coloring agents having different melt temperatures" has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 6, Patrick discloses a building material component (40) wherein said colored streaks (slight colored streaking throughout is inherent in extruded plastic materials due to material and mixing variations, and in fact is very difficult to eliminate, particularly when virgin material is not used. see column 2 lines 55-58) are created by adding one or more coloring agents having differing viscosities. The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "adding one or more coloring agents having differing viscosities" has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 7, Patrick discloses a building material component (40) wherein said building material component is used to create a fencing section (10 see figure 1; column 2 lines 41-45).

Regarding claim 8, Patrick discloses a building material component (40) used to create a fencing section (10), wherein fencing section further includes at least one post (12), at least two rails (16, 18) attached to said post, and fasteners (34) for attaching said building material component to said at least two rails.

Regarding claim 9, Patrick discloses a building material component (40) used to create a fencing section (10), wherein fencing section further includes at least one post (12), at least two rails (16, 18) attached to said post, and fasteners (34) for attaching said building material component to said at least two rails and at least one cap (upper and lower flanges 22 and 24) for attachment onto said at least one rail.

Claims 1-6, 29-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Heaps et al. (Heaps - US 4,128,689).

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Regarding claim 1, Heaps discloses a building material component, said building material component comprising an extruded component, a textured surface formed on said component, and colored streaks extending through said textured surface capable of simulating wood grain.

Regarding claim 2, Heaps discloses a building material component wherein said extruded component is made from ultraviolet stabilized polyethylene.

Regarding claim 3, Heaps discloses a building material component wherein said textured surface is created from injecting an agent having a melt temperature different than that of the base material of the component during the extrusion process. The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "injecting an agent having a melt temperature different than that of the base material of the component during the extrusion process" has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 4, Heaps discloses a building material component wherein said textured surface is created from injecting a blowing agent having a melt temperature different than that of the base material of the component during the thermoforming process. The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "injecting a blowing agent having a melt temperature different than that of the base material of the component during the thermoforming process" has been given only limited patentable weight. See MPEP § 2113.



Regarding claim 5, Heaps discloses a building material component wherein said colored streaks are created by adding one or more coloring agents having different melt temperatures. The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "adding one or more coloring agents having different melt temperatures" has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 6, Heaps discloses a building material component wherein said colored streaks are created by adding one or more coloring agents having differing viscosities. The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "adding one or more coloring agents having differing viscosities" has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 29, Heaps discloses a building material component, said building material component comprising an extruded component, a non-embossed textured surface formed on said component, and colored streaks extending through said textured surface.

Regarding claim 30, Heaps discloses a building material component wherein said extruded component is made from ultraviolet stabilized polyethylene.

Regarding claim 31, Heaps discloses a building material component wherein said textured surface is created from injecting an agent having a melt temperature different than that of the base material of the component during the extrusion process. The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "injecting an agent having a melt temperature different



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than that of the base material of the component during the extrusion process” has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 32, Heaps discloses a building material component wherein said textured surface is created from injecting a blowing agent having a melt temperature different than that of the base material of the component during the thermoforming process. The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation “injecting a blowing agent having a melt temperature different than that of the base material of the component during the thermoforming process” has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 33, Heaps discloses a building material component wherein said colored streaks are created by adding one or more coloring agents having different melt temperatures. The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation “adding one or more coloring agents having different melt temperatures” has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 34, Heaps discloses a building material component wherein said colored streaks are created by adding one or more coloring agents having differing viscosities. The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation “adding one or more coloring agents having differing viscosities” has been given only limited patentable weight. See MPEP § 2113.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 29-37 rejected under 35 U.S.C. 103(a) as being unpatentable over Patrick (US 5,657,967) in view of Heaps (US 4,128,689).

Regarding claims 1-9 and 29-37, Heaps discloses a building material component, said building material component comprising an extruded component, a textured surface formed on said component, and colored streaks extending through said textured surface. Heaps fails to disclose that the textured surface is non-embossed, and colored streaks specifically meant to resemble wood grain.

Heaps teaches the use of plastic building material component with a non-embossed textured surface and colored streaks specifically meant to resemble wood grain for the purpose of approximating wood veneer in color and texture. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention, to modify the arrangement of Patrick to use plastic building material component with a non-embossed textured surface and colored streaks specifically meant to resemble wood grain as taught by Heaps for the purpose of approximating wood veneer in color and texture.

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Regarding claim 35, Patrick in view of Heaps results in a building material component wherein said building material component is used to create a fencing section.

Regarding claim 36, Patrick in view of Heaps results in a building material component used to create a fencing section, wherein fencing section further includes at least one post, at least two rails attached to said post, and fasteners for attaching said building material component to said at least two rails.

Regarding claim 37, Patrick in view of Heaps results in a building material component used to create a fencing section, wherein fencing section further includes at least one post, at least two rails attached to said post, and fasteners for attaching said building material component to said at least two rails and at least one cap for attachment onto said at least one rail.

### ***Response to Arguments***

Applicant's arguments filed 11/16/2005 have been fully considered but they are not persuasive.

Applicant argues that Patrick discloses the use of recycled material, but not that this result in colored streaking in the material. However, it is inherent that using recycled plastic will result in slight color inconsistencies and variations throughout a finished product. Because the extrusion operation directs the flow of plastic, these variations in coloring will necessarily be oriented in the direction of flow. Furthermore, the amended claims require that these color variations be capable of resembling wood

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grain, and since they would be oriented in the same direction (along the direction of flow), this would clearly be the case.

### ***Conclusion***

Applicant's amendment to claims 1-9 and the addition of claims 29-37 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

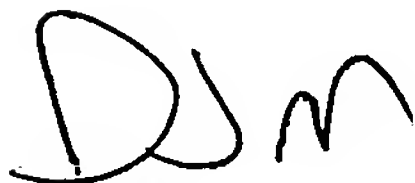
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Mills whose telephone number is 571-272-8115. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 571-272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DJM  
1/12/2006



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